

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM E. VUKICH,)	
Petitioner,)	
)	
vs.)	Civil Action No. 15-1480
)	Judge Conti
COMMONWEALTH OF PENNSYLVANIA,)	Magistrate Judge Mitchell
et al.,)	
Respondents.)	

O R D E R

On November 17, 2015, the petitioner, William E. Vukich, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (ECF No. 4), challenging the determination that he violated his probation and the imposition of one to three years imprisonment, imposed by the Court of Common Pleas of Beaver County, Pennsylvania on January 13, 2013. On that same date, he also filed a motion for immediate release (ECF No. 5).

On November 19, 2015, the magistrate judge filed a Report and Recommendation, which recommended that the petition be dismissed as untimely and that a certificate of appealability be denied. On December 2, 2015, the petitioner filed objections to the Report and Recommendation (ECF No. 8), in which he argues that the magistrate judge erred in construing his petition as being filed under § 2254, when it falls under 28 U.S.C. § 2255, which contains no time limits. Petitioner's contentions are without merit: not only did he file his petition on the form for § 2254 petitions, but more fundamentally, he is challenging his custody pursuant to the orders of a state court, not a federal court for which § 2255 is the appropriate statute.

AND NOW, this 15th day of December, 2015, upon consideration of the objections filed by the petitioner, and upon independent review of the petition and upon

consideration of the Magistrate Judge's Report and Recommendation (ECF No. 6), which is adopted as the opinion of this Court,

IT IS ORDERED that the petition for a writ of habeas corpus filed by petitioner (ECF No. 4) is dismissed as untimely; and

IT IS FURTHER ORDERED that, because reasonable jurists could not conclude that a basis for appeal exists, a certificate of appealability is denied; and

IT IS FURTHER ORDERED that the motion for immediate release filed by petitioner (ECF No. 5) is dismissed as moot.

IT IS FURTHER ORDERED that pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure if the petitioner desires to appeal from this Order he must do so within thirty (30) days by filing a notice of appeal as provided in Rule 3, Fed. R. App. P.

/s/ Joy Flowers Conti
Joy Flowers Conti
United States Chief District Judge

cc: William E. Vukich
KW-7692
S.C.I. Mercer
801 Butler Pike
Mercer, PA 16137